STATE OF MICHIGAN

COURT OF APPEALS

ANNA PAOLINI,

Plaintiff-Appellant,

v

K-MART CORPORATION,

Defendant-Appellee.

UNPUBLISHED
September 29, 2005

No. 262461
Wayne Circuit Court
LC No. 03-315477-NO

Before: Saad, P.J., and Jansen and Markey, JJ.

PER CURIAM.

Plaintiff appeals by right the trial court's order granting defendant's motion for summary disposition in this premises liability case. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Plaintiff sustained injuries when she slipped on broken-down boxes located on the floor near a waist-high freezer at the end of an aisle in defendant's store. An employee who was stocking the freezer had placed the boxes on the floor. Plaintiff filed suit alleging that defendant negligently failed to maintain the premises in a reasonably safe condition and to warn of the unsafe condition. Defendant moved for summary disposition pursuant to MCR 2.116(C)(10), arguing that it owed no duty to plaintiff because the condition of which she complained was open and obvious, and that no special aspects made the condition unreasonably dangerous in spite of its open and obvious nature. The trial court granted the motion.

We review a trial court's decision on a motion for summary disposition de novo. *Auto Club Group Ins Co v Burchell*, 249 Mich App 468, 479; 642 NW2d 406 (2001).

To establish a prima facie case of negligence, a plaintiff must prove: (1) that the defendant owed a duty to the plaintiff; (2) that the defendant breached the duty; (3) that the defendant's breach of duty proximately caused the plaintiff's injuries; and (4) that the plaintiff suffered damages. *Case v Consumers Power Co*, 463 Mich 1, 6; 615 NW2d 17 (2000).

A possessor of land has a duty to exercise reasonable care to protect an invitee from an unreasonable risk of harm caused by a dangerous condition on the land. The duty to protect an invitee does not extend to a condition from which an unreasonable risk of harm cannot be anticipated, or from a condition that is so open and obvious that an invitee could be expected to

discover it for himself. *Bertrand v Alan Ford, Inc*, 449 Mich 606, 609-611; 537 NW2d 185 (1995).

The open and obvious danger doctrine affects the duty element that a plaintiff must establish in a prima facie negligence case. *Id*. at 612. Whether a danger is open and obvious depends on whether it is reasonable to expect that an average person with ordinary intelligence would have discovered the danger upon casual inspection. *Novotney v Burger King Corp (On Remand)*, 198 Mich App 470, 475; 499 NW2d 379 (1993). If special aspects of a condition make even an open and obvious risk unreasonably dangerous, a possessor of land must take reasonable precautions to protect an invitee from that risk. If such special aspects are lacking, the open and obvious condition is not unreasonably dangerous. *Lugo v Ameritech Corp*, 464 Mich 512, 517-519; 629 NW2d 384 (2001).

A storekeeper must provide reasonably safe aisles for customers. In a premises liability action, a plaintiff must show either that the defendant caused the unsafe condition, or that the defendant knew or should have known of the unsafe condition. Such knowledge may be inferred from evidence that the condition existed for a sufficient length of time for the storekeeper to have discovered it. *Berryman v K-Mart Corp*, 193 Mich App 88, 92; 483 NW2d 642 (1992).

In this case, after plaintiff fell, she noticed the boxes on the floor immediately next to the freezer. She did not indicate that she had any difficulty seeing the boxes or the employee after she fell. The fact that plaintiff claims that she did not see the boxes until after she fell is not relevant. *Novotney*, *supra* at 475. Public policy dictates that persons take reasonable care for their own safety. *Bertrand*, *supra* at 616-617. Absent special circumstances that would preclude an average person from appreciating the hazard, such as an inability to see an obstruction until it was too late to avoid it,[1] a reasonably prudent person would refrain from putting her feet on loose cardboard on the floor. It is reasonable to conclude that plaintiff would have avoided slipping on the boxes had she been paying attention to the area in which she was walking. *Millikin v Walton Manor Mobile Home Park, Inc*, 234 Mich App 490, 497; 595 NW2d 152 (1999). Plaintiff did not come forward with sufficient evidence to create an issue of fact as to whether the condition was open and obvious.

Plaintiff also failed to demonstrate the existence of any special aspects that made the condition unreasonably dangerous in spite of its open and obvious nature. *Lugo*, *supra*. The trial court properly decided the issue as a matter of law and granted defendant's motion for summary disposition. *Reeves v K-Mart Corp*, 229 Mich App 466, 480; 582 NW2d 841 (1998).

We affirm.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Jane E. Markey

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[1] See, e.g., *Dunkle v K-Mart Corp*, unpublished opinion per curiam of the Court of Appeals, issued November 20, 2001 (Docket No. 218789), relied on by plaintiff.